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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,008	06/11/2004	David Lawrence Von Killeck	001345	4007
29569	7590	07/25/2007		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER BUSS, BENJAMIN J	
			ART UNIT 2129	PAPER NUMBER
			MAIL DATE 07/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/710,008	Applicant(s) VON KLEECK, DAVID LAWRENCE	
	Examiner Benjamin Buss	Art Unit 2129	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/11/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to an AMENDMENT entered 6/4/2007 for the patent application 10/710,008 filed on 6/11/2004, which claims priority to 60/320,261 filed on **6/11/2003**. The Office Actions of 12/4/2006 and 6/14/2006 are fully incorporated into this Office Action by reference. Claims 33-41 are pending.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." There are at least eight references in the specification that are **not** in the IDS filed on 6/11/2004. Unless these references have been cited by the examiner on form PTO-892, they have not been considered.

Specification***Response to Arguments***

Applicant presented no arguments regarding the Specification in the papers filed 6/4/2007. The Specification has been amended. The Specification objections have been withdrawn.

Claim Rejections - 35 USC § 103***Response to Arguments***

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

However, Applicant's arguments, see page 5, filed 6/4/2007, with respect to the art rejections of claims 21-32 have been fully considered and are persuasive. The rejections of canceled claims 21-32 under 35 U.S.C. §103 have been withdrawn.

New claims 33-41 have been rejected as detailed below.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

- 5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- 10 Claims 33-34, 36-37, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730) and **Zizzamia** (USPAP 2004/0054553).

Claims 33:

Neuneier teaches:

- 15 - inputting data (C1-8 especially "input data" C5:35-50; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);
- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- 20 - having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and "parameter" C5:35-60 and "new rule" C2:40-60); and
- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-25 55) and
- uses artificial neural networks to review said data (C1-8 especially "neural network" throughout),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

Neuneier fails to teach:

- 30 - the system being for hiring an employee;
- the machine learning deciding whether to hire or not hire a potential employee.

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Zizzamia teaches:

- inputting data of potential employees (p1-11 especially "additional data are appended from other data providers that are deemed pertinent to identifying productive and profitable agents" ¶¶18-19; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);
- the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 or "company would appoint an agent based on the agent's ability to produce future profits and increase productivity" ¶14 or "identifying productive and profitable agents" ¶18; *This is merely an intended use for the system which fails to further limit the claim*);
- where said results decide whether a potential employee should be hired or not hired (p1-11 especially "score that is indicative of the future profitability and productivity of licensed professionals to be recruited, appointed, hired or otherwise selected to provide services" ¶2 or "appoint an agent based on the agent's ability to produce future profits" ¶14 or "scoring new or existing producers using the predictive statistical model" §19; *These claims are directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the states does not change the functionality of the invention. Furthermore, the person of ordinary skill in the art at the time the invention was made would have logically envisioned having a threshold dividing candidates that should be hired from candidates which should not be hired*).

Motivation:

Neuneier and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

Claim 36:**Neuneier** teaches:

- inputting data (C1-8 especially "input data" C5:35-50; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);

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- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and "parameter" C5:35-60 and "new rule" C2:40-60); and
- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-55) and
- uses artificial neural networks to review said data (C1-8 especially "neural network" throughout),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

Neuneier fails to teach:

- the system being for hiring an employee;
- where said results are hire, hire with caution, and do not hire.

Zizzamia teaches:

- inputting data of potential employees (p1-11 especially "additional data are appended from other data providers that are deemed pertinent to identifying productive and profitable agents" ¶¶18-19; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);
- the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 or "company would appoint an agent based on the agent's ability to produce future profits and increate productivity" ¶14 or "identifying productive and profitable agents" ¶18; *This is merely an intended use for the system which fails to further limit the claim*);
- where said results indicate whether a potential employee should be hired, hired with caution, or not hired (p1-11 especially "score that is indicative of the future profitability and productivity of licensed professionals to be recruited, appointed, hired or otherwise selected to provide services" ¶2 or "appoint an agent based on the agent's ability to produce future profits" ¶14 or "scoring new or existing producers using the predictive

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statistical model" §19; *These claims are directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the states does not change the functionality of the invention. Furthermore, the person of ordinary skill in the art at the time the invention was made would have logically envisioned having thresholds dividing candidates that should clearly be hired from candidates that should be hired with caution and from candidates which should clearly not be hired*).

Motivation:

Neuneier and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

Claims 39:**Neuneier teaches:**

- inputting data (C1-8 especially "input data" C5:35-50; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);
- having a Model identification step review said data and output results (C1-8 especially "output value" C4:30-60 and "modeling" C1:1-20 and "membership functions" C4:60-C5:10 and "mapping" C5:25-35 and "actual output value of the neural network" C5:55-67);
- having a Model parameter estimation step review said output results (C1-8 especially "training" C5:35-60 and "parameter" C5:35-60 and "new rule" C2:40-60); and
- outputting final results (C1-8 especially "new fuzzy rule set NFR is thereby characterized by the new neural network NNN" C8:1-30)
- where said model identification step comprises identifying by decision nodes (C1-8 especially "neuron" C4:30-55) and
- uses fuzzy inference systems to review said data (C1-8 especially "fuzzy rule set" C4:30-55),
- where said model parameter estimation step uses machine learning to review said output results (C1-8 especially "training" C5:35-60 and "learning" C7:45-60).

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Neuneier fails to teach:

- the system being for hiring an employee;
- where said results are hire and do not hire.

Zizzamia teaches:

- 5 - inputting data of potential employees (p1-11 especially "additional data are appended from other data providers that are deemed pertinent to identifying productive and profitable agents" ¶¶18-19; *The phrase "of potential employees" is non-functional descriptive material which merely labels the data and does not affect the patentable utility of the claim*);
- 10 - the system being for hiring an employee (p1-11 especially "recruiting, hiring and appointing new insurance agents" ¶8 or "company would appoint an agent based on the agent's ability to produce future profits and increase productivity" ¶14 or "identifying productive and profitable agents" ¶18; *This is merely an intended use for the system which fails to further limit the claim*);
- 15 - where said results indicate whether a potential employee should be hired or not hired (p1-11 especially "score that is indicative of the future profitability and productivity of licensed professionals to be recruited, appointed, hired or otherwise selected to provide services" ¶2 or "appoint an agent based on the agent's ability to produce future profits" ¶14 or "scoring new or existing producers using the predictive statistical model" §19; *These claims are directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the states does not change the functionality of the invention. Furthermore, the person of ordinary skill in the art at the time the invention was made would have logically envisioned having a*
- 20 *threshold dividing candidates that should be hired from candidates which should not be hired*).

Motivation:

Neuneier and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of **Neuneier** by using the system for hiring an employee as taught by **Zizzamia** for the benefit of employing data sources to develop a

25 global producer database and model predictive of the future profitability and productivity of licensed professionals such as insurance agents to increase future profits and productivity (**Zizzamia** ¶¶14, 18, & 21).

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Claims 34, 37, and 40:

Zizzamia teaches:

- Where said data is biographical data (p1-11 especially "historical producer data" ¶19; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

Claim Rejections - 35 USC § 103

Claims 35, 38, and 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Neuneier** (USPN 6,317,730) and **Zizzamia** (USPAP 2004/0054553) in view of **Mascarenhas** (USPAP 2002/0029162).

Claims 35, 38, and 41:

The combination of **Neuneier** and **Zizzamia** fails to teach:

- Where said data is personality data.

Mascarenhas teaches:

- Where said data is personality data (p1-13 especially "Personality Trait Topography" ¶63 and "psychological, behavioral, personality, or other attributes" ¶51; *This claim is directed toward non-functional descriptive material which does not further limit the claims. Assigning labels or names to the data does not change the functionality of the invention*).

Motivation:

Mascarenhas and the combination of **Neuneier** and **Zizzamia** are from the same field of endeavor, data processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teachings of **Neuneier** and **Zizzamia** by using personality data as taught by **Mascarenhas** for the benefit of matching users with target information such as career openings (**Mascarenhas** ¶7).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Aggarwal ("Selection of Surgical Residents: A Neural Network Approach")
- Kirby ("An analysis of applying artificial neural networks for employee selection")

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- Liang ("Personnel selection using fuzzy MCDM algorithm")
- Labate ("Employee skills analysis using a hybrid neural network and expert system")

Claims 33-41 are rejected.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Buss whose telephone number is 571-272-5831. The examiner can normally be reached on M-F 9AM-5PM.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the applicant. Without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Vincent can be reached on 571-272-3080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin Buss
Examiner
Art Unit 2129

/BB/

7/19/07
DAVID VINCENT
SUPERVISORY PATENT EXAMINER